THE HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

WRIT PETITION. No. 25485 of 2007

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Date: 13.12.2007

Between:

Mulla Mahaboob Saheb
& others.

... Petitioners

AND

The State of A.P., rep., by its Secretary,
Minority Welfare Department,
Secretariat Buildings, Hyderabad,
& another.

... Respondents

Counsel for the petitioners : Sri Syed Shareef Ahmed

THE HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

WRIT PETITION. No. 25485 of 2007

ORDER:-

This writ petition is filed to invalidate order dated 31.10.2007 passed by the Chief Executive Officer of A.P. State Wakf Board, Hyderabad, whereby the claim of the petitioners for recognizing them as Mutawallies of big and small mosque situated in Podili Village and Mandal, Prakasam District, was rejected.

The petitioners claim that they are the descendants of the original Mutawallies of the abovementioned mosque. They filed Writ Petition No.11350 of 2007 in this Court questioning order dated 26.05.2007 passed by respondent No.1, appointing a supervisory committee comprising 11 persons. This Court by order dated 07.06.2007 disposed of the said writ petition directing respondent No.1 to endeavor to appoint Mutawalli or Mutawallies, as the case may be, to the Wakf in question, duly recognizing the claims of the heirs of the erstwhile Mutawallies, in accordance with law as early as possible. It is specifically observed in the said order that in case any disputes arise as to the recognition of the Mutawallies, it shall be open to the affected parties to approach the A.P. Wakf Tribunal (for short, 'the Tribunal').

In compliance with the said order, the Chief Executive Officer of the A.P. State Wakf Board passed the impugned order, whereby for the reasons given in detail, the claim of the petitioners

has been rejected.

When the writ petition came up before this Court on 03.12.2007, this Court expressed the prima facie view that in view of the availability of a statutory remedy under Section 83(2) of the A.P. Wakf Act, 1995 (for short, 'the Act') the writ petition cannot be entertained. Sri Syed Shareef Ahmed, learned counsel for the petitioners took time to convince this Court that the alternative remedy under Section 83(2) of the Act is not available in respect of a dispute pertaining to Mutawalliship. Further time was granted to him on 06.12.2007 for this purpose. Today, Sri Shareef Ahmed has advanced his arguments.

Section 83(2) of the Act, reads as under:

> "Any mutawalli person interested in a Wakf or any other person aggrieved by an order made under this Act, or rules made thereunder, may make an application within the time specified in this Act or where no such time has been specified, within such time as may be prescribed, to the Tribunal for the determination of any dispute, question or other matter relating to the Wakf."

Section 7(1) of the Act reads as follows:

> "If, after the commencement of this Act, any question arises, whether a particular property specified as Wakf property in a list of Wakfs is Wakf property or not, or whether a Wakf specified in such list is a Shia Wakf or a Sunni Wakf, the Board or the mutawalli of the Wakf, or any person interested therein, may apply to the Tribunal having jurisdiction in relation to such property, for the decision of the question and the decision of the Tribunal thereon shall be final:
> Provided that:-

(a) in the case of the list of Wakfs relating to any part of the State and published after the commencement of this Act no such application shall be entertained after the expiry of one year from the date of publication of the list of Wakfs; and

(b) in the case of the list of Wakfs relating to any part of the State and published at any time within a period of one year immediately preceding the commencement of this Act, such an application may be entertained by Tribunal within the period of one year from such commencement:

Provided further that where any such question has been heard and finally decided by a Civil Court in a suit instituted before such commencement, the Tribunal shall not reopen such question."

Learned counsel for the petitioners submitted that since the remedies envisaged under Sections 83(2) and 7 of the Act relate to disputes in respect of a Wakf and that since the petitioners claim relates to mutawalliship, the remedy under Section 83(2) read with Section 7 of the Act is not available to the petitioners. I have not felt convinced with this argument of the learned counsel for the petitioners.

The language of Section 83(2) of the Act as reproduced above is clear and unequivocal, which encompasses any order passed under the Act or Rules made thereunder relating to any dispute, question or other matter pertaining to the Wakf. There is no gain saying that the petitioners' claim for the office of mutawalli is in respect of a Wakf and *de hors* the Wakf the said claim of the petitioners cannot be visualized. It is due to this reason that this Court in its order dated 07.06.2007 passed in Writ Petition

No.11350 of 2007 observed that if any dispute arises as to the recognition of the mutawallies, it shall be open to the affected parties to approach the Tribunal. The petitioners have not questioned this observation of the learned Judge.

It is legally well settled that if a person has an effective statutory remedy available, this Court seldom entertains a writ petition filed bypassing such a remedy. (see **Harbanslal Sahnia v. Indian Oil Corporation Limited**[1] and **U.P. State Spinning Company Limited v. R.S. Pandey and another**[2]).

In the premise aforesaid, the writ petition is dismissed. The petitioners are given liberty to avail the remedy of appeal under Section 83(2) of the Act.

As a sequel to dismissal of the writ petition, WPMP.No.33217 of 2007 filed by the petitioners for interim relief is also dismissed.

C.V. NAGARJUNA REDDY, J

Date: 13.12.2007
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[1] (2003) 1 SCC 107
[2] (2005) 8 SCC 264